

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 935 Chiefs of Police

**SPONSOR(S):** Jacques and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee		Wagoner	Miller
2) Criminal Justice Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The chief of a municipal law enforcement agency has certain powers, duties and obligations, including the requirement to establish communications and assistance with other law enforcement agencies. The governing body of a municipality may hire or appoint, and terminate, a police chief directly or may delegate such authority to the mayor or the city manager.

The bill defines a "Chief of Police" to mean a person, other than an elected official, who is appointed or employed full time by the state or any political subdivision who is the chief law enforcement officer of a law enforcement agency.

The bill creates a new section of statute entitled the "Rights of Chiefs of Police." While recognizing that a chief of police is accountable for the direction and actions of the municipal law enforcement agency, the bill provides certain protections when the municipality seeks to terminate the chief's employment or appointment. The bill provides that a person employed or appointed as a chief of police may not be terminated by the employing municipality without written notice, just cause, and an opportunity to be heard in a public meeting. The bill also guarantees the chief may be represented by counsel in any proceedings seeking the chief's dismissal.

The bill provides that a chief of police may bring a civil action against any person, group, or organization, for damages suffered during the performance of official duties. The bill provides timelines for reporting alleged actions or violations.

The bill may have an indeterminate but negative impact on local governments that employ police chiefs. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Municipalities are constitutionally granted all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Additionally, municipalities are constitutionally authorized to exercise any power for municipal purposes except when expressly prohibited by general or special law.<sup>1</sup> Municipalities may create, fund, operate, and determine the employment and personnel policies for police departments,<sup>2</sup> including the hiring and termination of law enforcement officers and the chief of police. A law enforcement officer is any person who is elected, appointed, or employed full time by any municipality or the state and vested with authority to bear arms and to make arrests, and whose primary responsibility is the prevention and detection of crime, or enforcement of the laws of the state.<sup>3</sup>

Every municipal law enforcement agency has certain powers, duties, and obligations. Police chiefs must schedule at least two law enforcement officers to be on duty at all times and either provide for their ability to communicate directly, communicate with the sheriff's office, or provide a mutual aid agreement with other municipal police departments for on-duty officers to request assistance.<sup>4</sup> Every municipal law enforcement agency is required to incorporate antidiscriminatory policies into the agency's operational practices. The policies and practices utilize the Florida Police Chief's Association model policy as a guide.<sup>5</sup>

Some municipalities authorize a city manager to employ or appoint a chief of police but reserve final authority to dismiss the chief to the governing body.<sup>6</sup> Other municipalities vest executive authority in the mayor, with full authority to appoint or remove the chief of police.<sup>7</sup>

##### **Effect of the Bill**

The bill defines a "Chief of Police" as a person, other than an elected official who is appointed or employed full time by the state or any political subdivision thereof as the chief law enforcement officer of a law enforcement agency. The definition excludes state law enforcement executives whose appointment or employment is governed by other provisions of law. The bill defines "employing agency" to have the same meaning as provided in s. 943.10(4), Florida Statutes.

The bill creates s. 112.5321, F. S., entitled "Rights of Chiefs of Police." The bill recognizes that a police chief is accountable for the direction and actions of the law enforcement agency and that communities deserve the opportunity to participate in any hearing where termination of the community's police chief is being discussed.

The bill provides that a police chief may not be terminated by the employing agency without written notice, just cause, and an opportunity to present a defense to the proposed termination in a public meeting at which the police chief may be represented by counsel. The bill also provides that a police chief may bring a civil action against any person, group or organization, for damages suffered during the performance of official duties, for abridgement of civil rights arising out of the performance of official duties, or for a false complaint when the complainant knew it was false.

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<sup>1</sup> Art. VIII, s. 2(b), Fla. Const. See s. 166.021, F.S.

<sup>2</sup> See ss. 166.049, 166.0493, 166.0495, F.S. See, e.g., Municipal Charter of the City of Tampa, art. V, s. 5.01(d).

<sup>3</sup> S. 943.10(1), F.S.

<sup>4</sup> S. 166.049, F.S.

<sup>5</sup> S. 166.0493, F.S.

<sup>6</sup> City of Miami, Code of Ordinances, ch. 42, s. 42-2, at

[https://library.municode.com/fl/miami/codes/code\\_of\\_ordinances?nodeId=PTIITHCO\\_CH42PO\\_ARTIINGE\\_S42-2APDIPODE](https://library.municode.com/fl/miami/codes/code_of_ordinances?nodeId=PTIITHCO_CH42PO_ARTIINGE_S42-2APDIPODE) (last visited March 23, 2023);

<sup>7</sup> Municipal Charter for the City of Pensacola, art. I, s. 4.01(1)(a); Municipal Charter for the City of Tampa, art. VI, s. 6.03.

A police chief aggrieved by an alleged violation of the protections provided in the event of a termination must provide written notice to the employing agency within three days after the alleged violation. The employing agency shall cure the alleged violation within five days of receiving written notice, unless both parties agree in writing to a longer time period.

**B. SECTION DIRECTORY:**

Section 1 renumbers and amends s. 112.531, F.S. relating to definitions.

Section 2 creates s. 112.5321, F.S. relating to the rights of chiefs of police.

Section 3 provides and effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate but negative impact on local governments that employ a chief of police. See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The requirement to terminate the employment of a chief of police only for cause and only after providing written notice of the reasons for termination and the opportunity to present a defense at a public hearing may additional expenditures of public funds by local governmental entities other than counties. However, such expenditures are incurred only in the event a local government terminates the employment of a chief of police and may not be significant.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither requires nor provides authority for executive branch rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**